

BOARD OF ZONING APPEALS

The regular meeting of the Board of Zoning Appeals was held on Thursday, September 1, 2016 at 7:00 p.m. in the Public Safety Building located at 500 Quincy Street.

Vice President John Six called the meeting to order at 7:00 p.m.

ROLL CALL OF MEMBERS

Present

Vice President John Six
Board Member Ray Friend
Board Member Gia Deasy
Board Member Michael Ragan
Board Member Aron Majic

Absent

President Joe Manchin, Jr.

Board Member Deasy motioned to excused **President Manchin** from the meeting due to a prior obligation. **Board Member Ragan** seconded her motion.

City Staff Present

City Manager, Robin Gomez
Planning Dept. Secretary, Maria Cipolla

APPROVAL OF MINUTES

Vice President Six asked for a motion to approve the minutes from June 3, 2016.

Board Member Ragan motioned to approve the minutes.

Board Member Friend seconded the motion.

Motion carried 5-0.

PUBLIC HEARINGS FOR September 1, 2016

1. **Omni Associates, on behalf of their client, is requesting a variance from the Fairmont City Zoning Code Section 5.6.5 (lot standards) to permit a structure to not front onto the public street; and from zoning code section 3.1.5F (development standards) which will permit a maximum front yard setback greater than 45 feet.**

Vice President Six: "Is there anyone to speak in favor of this variance?"

Jay Rogers, with Omni Associates: The need for two variance came out of our DRC meeting with the City. The location is at the corner of Beverly Road and Twelfth Street. This is the former CVS site. The nature of this building is a very irregular shaped lot. It is shaped like a pie and slopes from Fairmont Avenue back towards Virginia and Gaston Avenues. We are dealing with an irregular shaped parcel with a steep terrain. Through the DRC committee, the orientation of the building was one of the first issues discussed. As you can see, it is a building with a drive-thru. The orientation of the drive-thru makes sure the driver can pull up to the window and complete their business. But, one of the concerns at the DRC meeting was bringing traffic onto Twelfth St. So, that changed how we would orient the building. Orienting the building towards the front [according to code] would force the traffic onto Twelfth Street, which is an area with a lot of residential traffic. The middle school is also there with the school children and buses, so we want to avoid that. The design will have an appearance of a façade that will be favorable toward the front. The door access will not be oriented toward the street.

The second variance that we are requesting deals with the terrain of the property. Our initial setback from our drive-thru canopy is 52'. So we exceed the 45' maximum front yard setback. We are trying to take advantage of the way the property is. We want to be able to situate the building in one of the flat spots of the parcel. The good thing about doing this is it does give us a very large area in the front to provide landscaping and a rain garden to catch some of the storm water drainage on site and coming off of the intersection of Twelfth Street and Beverly Road, as well. Does anyone have any questions?

Vice President Six: Where are you measuring the setback from?

Jay Rogers: From the edge of the front canopy to the property line. (Jay came up to the Board Members and pointed it out on their site plan).

Vice President Six: Is there anyone else to speak in favor of this?

There were none.

Vice President Six: "Is there was anyone here to speak against this proposal?"

There were none

Vice President Six: "Is there is a motion to close the public hearing on this request?"

Commissioner Friend motioned to close the meeting.

Commissioner Ragan seconded the motion.

Motion carried 5-0

Vice President Six asked for the Staff report.

Maria Cipolla, Planning Department Secretary read the staff report. The staff report was in support of both the variances being requested.

Maria Cipolla, Planning Department Secretary: There were no negative comments from any City agencies.

Vice President Six asked for a motion on the first variance for the frontage.

Board Member Friend motioned to approve as submitted.

Board Member Deasy seconded the motion.

Motion carries 5-0

Vice President Six asked for a motion on the second variance for the maximum setback to be 52 feet.

Board Member Friend: Motioned to approve as submitted

Board Member Ragan seconded the motion.

Motion carried 5-0

2. Tammy Cole is requesting a conditional use permit to host a child care facility at 1605 Morgantown Avenue (Marion County Tax Parcel 08-06-07 and 06-06-06).

Vice President Six asked if there is anyone here to speak in favor of this request.

Tammy Cole, owner of Tammy's Kiddo Corner, handed out booklets to each Board Member explaining the services she provides, with pictures inside and outside of her day care, letters of support, and copies of her various certificates, licenses and permits from various agencies.

Tammy Cole: I am the owner of Tammy's Kiddo Corner. I have two teachers; Jessica Cottrill and Sarah Cale. I have three schools dropping off and picking up children: East Dale Elementary, East Park Elementary, and East Park Middle schools. I have been approved by the WV Fire Marshall, WV Department of Agriculture, Marion County Health Department, and WV DHHR. I accept the Child Care Resource Center subsidized payments. We offer a nutritional breakfast, lunch, and snack. We have a quiet area for napping, a changing table, and a backyard surrounded by a four foot fence. I have 599 square feet inside and a 1,049 square feet outside.

Maria Cipolla: Did the Building Inspector manage to come and inspect your facility?

Tammy Cole: Ken did come out. The only thing he said we needed to do was fix the railing on the small outside porch coming into the building. My husband is in the process of correcting the railing.

Vice president Six: Are you operating business at this location now?

Tammy Cole: I am. I was approved through the State June 1st for my facility. Before that, I had an in-home day care which allowed me to accept six children. Now I can accept up to twelve. I am licensed for 6 weeks to 12 years of age.

Vice President Six asked if there was anyone else to speak in favor of this request.

There were none

Vice President Six asked if there was anyone to speak against.

There were none

Vice President Six asked for a motion to close the public hearing.

Board Member Friend motioned to close.

Board Member Majic seconded the motion.

Motion carried 5-0

Vice President Six asked for the staff report.

Maria Cipolla, Planning Department Secretary read the staff report. Staff did support Tammy Cole's request for the Conditional Use, but stated that the current back yard fence needed to upgrade to six feet in height and be screened from the street with landscaping. The staff report also stated that if the facility uses the Church of the Nazarene's parking lot, then they must obtain a written agreement from them which provides for continued use and maintenance of the parking. This must be submitted to the City for approval.

Richard Cole: The upstairs area for the child care is 599 square feet.

Vice President Six: Tammy, do you have any plans to change the fencing? Did you know anything about that?

Tammy Cole: This if the first I heard of it. I was approved through the State of WV and the DHHR. I assumed that was what was required. If I need to correct it, I will correct it.

Ray Friend: Where are we on the parking? Is there enough parking?

Gia Deasy: What is the agreement between them and the church [about using their parking lot]?

Maria Cipolla: [addressed Tammy Cole] Do you have an agreement with the church?

Tammy Cole: I don't have a written agreement. They just allow us to use it, but I also have our driveway that allows two for parking.

Vice President Six: So you are one short, right? You need one for every employee.

Maria Cipolla: Sandra [Sandra Scaffidi, City Planner] put in her report that a minimum of three is required.

Tammy Cole: My husband said there is enough room in our driveway for three parking spots.

Vice President Six: Did you get the City's Code Enforcement to come out there to inspect?

Maria Cipolla: Yes, Ken did go out and inspect.

Vice President Six: Did they verify the parking? [Addressed the question to Tammy Cole]

Tammy Cole: He told me everything is o.k. and we are good-to-go.

At this point there is a discussion among the Board members and Maria Cipolla about the issues.

Vice President Six and Maria Cipolla explained to Richard and Tammy Cole about screening the six-foot fence from the street once it is installed.

Robin Gomez: Also, on the parking. There are certain requirements that the State does not have. The City's code is allowed to be more restrictive than the State's code. That is why there is a parking requirement. The only other concern regarding the parking is the drop-off and pick-up of the children. Where will that occur?

Tammy Cole: Right in my driveway. They can pull up in front of my garage. Both of my employees don't have vehicles. My car is in the garage.

Robin Gomez: My suggestion would be that they do obtain an agreement with the church.

Vice President Six: I think what Mr. Gomez is getting at is that several parents may show up at one time and that could create a problem.

Tammy Cole: I can get that agreement.

Maria Cipolla: You can just bring that to me at the office.

Vice President Six asked for a motion for this request.

Board Member Friend motioned to approve with certain conditions. First, Tammy Cole must install a six-foot fence with the proper screening to provide blockage from the front of the house. Second, we would need submitted to us an agreement with the adjacent church that provides parking and the ability to pick up and drop off children or for employees. Outside of that, I make a motion to approve.

Board Member Majic seconded the motion.

Motion carried 5-0

3. **Tahoe Management Five is requesting a conditional use permit to host a convenience store/fuel station at 301 Locust Avenue. The current zoning is Main Corridor Commercial. The applicant also wishes to request the following variances: a variance requiring the frontage building out, the maximum front setback, the minimum structure height, hours of operation, gasoline pump and parking located in the side yard and the location of the trash containers in a side yard (Marion County Tax Map 27, parcels 49 and 50).**

Vice President Six asked if there was anyone to speak for this request.

Erik Bacorn, with Tahoe Management Five: We propose to relocate our store across the street due to West Virginia DOH condemning our property for the Fourth Street Bridge project. We feel this location fits our needs quite nicely for the most part. It just doesn't quite fit in the zoning requirements. We are requesting more than the maximum front yard setback to allow for some parking in front of the store. Along with that we are requesting to allow for the parking in the front for a better flow of traffic. We would like the dumpster to be allowed in the front. We don't want to put it near the store because of the retaining wall there. Putting the dumpster near Green St. would put it at a great distant from the store. It will be enclosed with a six foot fence and landscaping. As for the building height, the flat roof works best functionally for our use. It allows us to put our air conditioners and coolers on the roof. This keeps people from tampering with them or other liabilities. I didn't want a big gaudy structure either. We would like to keep our hours of operations to maintain our client base. The location of the gas pumps again is for the flow of traffic. The trouble here is all I have is front yard essentially so I can't put something in the side yard like it is zoned. Does anyone have any questions?

Board Member Deasy: Is this the same number of tanks you have right now?

Eric Bacorn: We had a single tank with two compartments. We only sold gasoline. We did not sell diesel at the other location, I don't believe. I have only been here a few months and it was closed about a year and a half ago.

Board Member Deasy: How many pump stations will you have?

Eric Bacorn: We will have four islands here. We are willing to schedule our gasoline deliveries during the off hours to avoid any traffic jams. Of course, sometimes we get a run on gasoline so we will have to call in the odd order.

Board Member Friend: I see around the back side that you have a ten-foot landscape buffer. Do you know what that is going to consist of?

Eric Bacorn: Shrubs and trees that you require. There will be one tree for every 20 feet, I believe. There will be four or five shrubs in between that. There are existing pine trees there. I am uncertain if they are on my property or the neighbors.

Tom Reese (owner of adjoining property): They are actually on your property. There was an alley there. The City of Fairmont gave it to Thomas Exxon. My water and my sewage goes out and down that alley.

Vice President Six: Any other questions?

There were none

Vice President Six: Is there anyone else to speak in favor of these requests?

There were none

Vice President Six: Is there anyone here to speak against these requests?

Keith Wenrich (owner of adjoining property): I'm not against the building. I'm just concerned about the light and the noise pollution that will be just outside of my bedroom. We already get a lot of garbage there as it is. People walking from the Mart throw their trash into my yard. I don't want more trash. The light and the noise is an issue because a lot of the cars that go there are loud. I hear it at my house now. I don't know if there is any way they could put up some kind of signage that would say to keep the noise down or no loud music. It gets quite annoying at times.

Robin Gomez, City Manager: There are lighting requirement that state the lighting must be contained to the parcel. For service stations, it pretty much has to be contained in the canopy. That is what we have advised other applicants to do.

Keith Wenrich: That is a current bus stop in the morning for the students. I think they have four bus times. In the morning and the afternoon. It starts approximately about 7 o'clock in the morning. How is that going to be affected with the extra traffic?

Robin Gomez: Unfortunately, that is the Board of Education using someone's private property. To my knowledge, I don't believe they asked the property owners if they could do that. I think the Board of Education will have to find another location. That is a valid point. I don't want to sound mean to the kids or the families but that is something we will have to advise the Board of Education on so that they may find an alternative transportation location for those students.

Vice President Six: Is there anyone else to speak against?

Thomas Reese: I will be surrounded on two sides by the Mountaineer Mart and the canopy. My garage will be by the Mart and from my bedroom windows I will be able to look down at the canopy. So I came to the meeting to find out what was coming. I am concerned about the noise level and everything else. Are you planning on leaving the pine trees on the backside?

Eric Bacorn: I would rather get rid of them.

Vice President Six: Please direct your questions to us and then we can redirect.

Thomas Reese: I wouldn't mind having those trees shorten a little bit. They are already getting tall. There is one on the corner of the property. It is partially on my property. I would rather keep them because everything I see is from my bedroom and living room.

Vice President Six: Is there anyone else to speak against?

There were none

Vice President Six asked for a motion to close the public hearing.

Board Member Friend motioned to close the public hearing.

Board Member Ragan seconded the motion.

Motion carried 5-0

Vice President Six asked for the staff report.

Maria Cipolla read the staff report for the record.

Vice President Six requested a motion on the first request for a variance requiring the frontage building out.
Board Member Friend motioned to approve.
Board Member Ragan seconded the motion.
Motion carried 5-0

Vice President Six requested a motion on the maximum front setback.
Board Member Ragan motioned to approve.
Board Member Deasy seconded the motion
Motion carried 5-0

Vice President Six requested a motion on the request regarding the height of the building.
Board Member Friend motioned to approve the request.
Board Member Deasy seconded the request.
Motion carried 5-0

Vice President Six requested a motion on the request to extend hours of operation.
Board Member Friend motioned to deny this request.
Board Member Majic seconded the motion.
Motion carried 5-0

Vice President Six requested a motion for the request regarding the location of the parking and gasoline pumps not being required to be located in the side yard.
Board Member Majic motioned to approve this request.
Board Member Ragan seconded the motion.
Motion carried 5-0

Vice President Six requested a motion for the request not to have the dumpster located in the side yard.
Board Member Ragan motioned to approve this request.
Board Member Friend seconded this motion.
Motion carried 5-0

Vice President Six requested a motion for the request of a conditional use permit to host a convenience store/fuel station at 301 Locust Avenue.
Board Member Majic motioned to approve this request.
Board Member Ragan seconded the motion.
Motion carried 5-0

DISPOSITION OF PAST CASES

None

OTHER BUSINESS

None

ADJOURNMENT

Vice President Six asks for a motion to adjourn.
Board Member Ragan motioned to adjourn.
Board Member Majic seconded the motion.
Motion carried 5-0.